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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/050,900 | 01/16/2002 | Donald P. McGee | 088223-9036-01 | 5836 |

23409 7590 07/03/2003

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| EXAMINER |
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SIPOS, JOHN

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| ART UNIT | PAPER NUMBER |
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3721

DATE MAILED: 07/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/050,900 | Applicant(s) MCGEE ET AL. | |
| | Examiner John Sipos | Art Unit 3721 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 8-11, 13-20, 22 and 23 is/are rejected.
- 7) ☒ Claim(s) 12 and 21 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4,4,5,5</u> . | 6) <input type="checkbox"/> Other: |

ELECTION

Claims 1-7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 8.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8,9,13-17,20,22 and 23 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Umetsu (5,191,693) or Bird (5,729,963) in view of Tuns (4,1298,166) or Otto (2,899,783). The patents to Umetsu and Bird show a support for a carrier tape (machine frame which inherently supports the tape), advancing means (12 and 209/211, respectively) for the tape, pick-up-place means (H and 210, respectively) for placing articles in the compartments of the tape and inspection means (20 and column 5, line 18 et seq. respectively). These references lack the use of vibrating means to settle the products in the compartments. The patents to Tuns and Otto show packaging machines which comprise conveying paths (6 and 36, respectively) for moving containers past a filling mechanism (7 and 18, respectively) and vibrating means (14 and 46, respectively) under the conveying path that vibrates the containers

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to settle the products through a transferring member (13 and 36a, respectively). It would have been obvious to one of ordinary skill in the art to provide the machines of Umetsu or Bird with a vibrating means as shown by Tuns or Otto to vibrate and settle the articles in the compartments. The specific type of vibrating means (claims 14,15,20,22 and 23) are well known and their use in the Umetsu or Bird machines would have been obvious to one of ordinary skill in the art to settle the articles.

Claims 10,11,18 and 19 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Umetsu and Bird in view of Tuns or Otto as applied to the claims above, and further in view of the patent to Sato (5,943,211⁴). The combination of references does not show a vibrator with an eccentric weight. The patent to Sato shows a vibrating mechanism comprising a motor 1 with an output shaft and an eccentric weight 6 on the shaft to vibrate the motor (column 11, line 37 et seq.). it would have been obvious to one of ordinary skill in the art to substitute the vibrator of Sato for the vibrator of the Umetsu or Bird combination to settle the articles in the compartments.

ALLOWABLE SUBJECT MATTER

Claims 12 and 21 are objected to as being dependent upon a rejected base claim, but **would be allowable if rewritten in independent form** to include all of the limitations of the base claim and any intervening claims.

ADDITIONAL REFERENCES CITED

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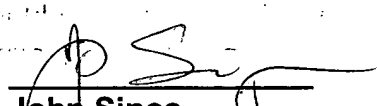
The cited prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9302**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.


John Sipos
Primary Examiner
Art Unit 3721

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